IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 30-10-2007

Coram

The Honourable Mr.Justice K. VENKATARAMAN

W.P.Nos.29764 to 29771 of 2007
and
Connected M.Ps.

P.Vasu .. Petitioner in WP 29764/07 & WP 29765/07

D.Devadhasan .. Petitioner in WP 29766/07 & WP 29767/07

M.Govindasamy .. Petitioner in WP 29768/07 & WP 29769/07

D.Purushothaman .. Petitioner in WP 29770/07 & WP 29771/07

Vs.

Tamilnadu State Transport Corporation
(Villupuram) Ltd,
Kancheepuram Region,
rep. by its General Manager,
Kancheepuram. ..1st Respondent in all the above WPs.

The Branch Manager,
Thiruthani Depot,
Tamilnadu State Transport Corporation
(Villupuram) Ltd, Kancheepuram Region,
Thiruthani. .. 2nd respondent in WP Nos.29765 29767, 29769 & 29771 of 2007

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W.P.No.29764 of 2007 filed under Article 226 of the Constitution of India praying to issue a writ of certiorari calling for the records pertaining to the Charge Memo No.370/187/Sa.06,TNSTC/2007 dated 4.9.2007 issued by the respondent and quash the same.

W.P.No.29765 of 2007 filed under Article 226 of the Constitution of India praying to issue a writ of certiorari calling for the records pertaining to the order in Memo No.4256/Pa.3/TNSTC(Vi)/Kanchi/2007 dated 5.9.2007 of the 1st respondent and the order of the 2nd respondent in Memo No.143/BM/TNSTC/07 dated 7.9.2007 and quash the same.

W.P.No.29766 of 2007 filed under Article 226 of the Constitution of India praying to issue a writ of certiorari calling for the records pertaining to the Charge Memo No.370/1870/Sa.06,TNSTC/2007 dated 4.9.2007 issued by the respondent and quash the same.

W.P.No.29767 of 2007 filed under Article 226 of the Constitution of India praying to issue a writ of certiorari calling for the records pertaining to the order in Memo No.4253/Pa.3/TNSTC(Vi)/Kanchi/2007 dated 5.9.2007 of the 1st respondent and the order of the 2nd respondent in Memo No.139/BM/TNSTC/07 dated 7.9.2007 and quash the same.

W.P.No.29768 of 2007 filed under Article 226 of the Constitution of India praying to issue a writ of certiorari calling for the records pertaining to the Charge Memo No.370/1870/Sa.06,TNSTC/2007 dated 4.9.2007 issued by the respondent and quash the same.

W.P.No.29769 of 2007 filed under Article 226 of the Constitution of India praying to issue a writ of certiorari calling for the records pertaining to the order in Memo No.4255/Pa.4/TNSTC(Vi)/Kanchi/2007 dated 5.9.2007 of the 1st respondent and the order of the 2nd respondent in Memo No.142/BM/TNSTC/07 dated 7.9.2007 and quash the same.

W.P.No.29770 of 2007 filed under Article 226 of the Constitution of India praying to issue a writ of certiorari calling for the records pertaining to the Charge Memo No.370/1870/Sa.06,TNSTC/2007 dated 4.9.2007 issued by the respondent and quash the same.

W.P.No.29771 of 2007 filed under Article 226 of the Constitution of India praying to issue a writ of certiorari calling for the records pertaining to the order in Memo No.4004/Pa.1/TNSTC(Vi)/Kanchi/2007 dated 7.9.2007 of the 1st respondent and the order of the 2nd respondent in Memo No.148/BM/TNSTC/07 dated 10.9.2007 and quash the same.

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For Petitioner : Mr.D.Hariparanthaman

For Respondents : Mr.R.Singaravelan

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O R D E R

In all these Writ Petitions, the petitioners have challenged the Charge memos as well as the orders of transfer issued by the respondents.

2. The short facts, which are necessary for the disposal of the present Writ Petitions, are as follows:-

The petitioners have joined the services of the respondents-Corporation as Conductor/Driver/Senior Assistant and have been working at Thiruthani Depot. While so, due to rampant and indiscriminate sand removal/mining from the bank of Kusasthalai River, one of the political parties held demonstration at Vidaiyur. In support of the cause, AIADMK also gave a call and organised a dharna/demonstration at the said village on 29.8.2007. In support of the call, various wings of the said party, including the trade union wing, extended support and members of those wings participated in the said demonstration. The demonstration took place for one hour from 11.00 A.M. to 12.00 Noon in a peaceful and democratic manner. But, the police tried to arrest the important persons due to political vendetta and the local public made protest against such move of the police. Due to political pressure, the police arrested about 82 persons and registered F.I.R. against them under various provisions of the I.P.C. as well as T.N.P.P.D. Act. The petitioners were also arrested and remanded to judicial custody. They were all enlarged on bail by an order dated 31.8.2007. The petitioners who have been arrested and enlarged on bail later reported for work at 12.00 noon on 3.9.2007, but they have not been allowed to work. While so, the Charge Memo dated 4.9.2007 and transfer order dated 5.9.2007 were served on them. In the charge memo, it is alleged that they have participated in the demonstration held at Vidaiyur on 29.8.2007, got arrested and remanded to judicial custody and that their act was contrary to the standing orders of the Corporation. Hence, questioning the issuance of the Charge memo and the transfer order, they have approached this Court for the reliefs set out earlier.

3. Counter affidavit has been filed by the respondents wherein the following facts have been set out:-

Since the petitioners have been arrested and remanded to judicial custody, charge memo was issued to them on 4.9.2007. Though they could be suspended from service for their

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misbehaviour in the interest of public, their case has been considered leniently and they have been transferred to various depots for the smooth and peaceful atmosphere of the Depot. The petitioners absented themselves from duty and participated in the agitation without any prior notice. Being public sector employees and members of the essential services, they should not have participated in the agitation organised by the political party other than the trade union. As per Clause 24(XLiii) Corporation Standing Orders, the conduct of the petitioners amounts to grave misconduct and hence, charge memo has been issued to them in the interest of public and that they have been transferred. Since the petitioners absented from duty without any prior intimation, the Corporation was put to great hardship. Thus, the sum and substance of the counter affidavit is that the issuance of charge memo as well as the order of transfer have been made since the petitioners have participated in the agitation without any prior intimation which is in violation of the Corporation Standing Orders.

4. Common rejoinder affidavit has been filed by the petitioners wherein the following averments are made:-

Unlike the Government servants, the industrial employees have no legal bar or prohibition for being a member of a political party. The provisions of the Trade Unions Act, particularly Section 16 of the Act recognises the right of a workmen/member/office bearer to associate with a political party of his choice. Hence, simply because the petitioners participated in the agitation called by a political party, the respondents cannot issue a charge memo and transfer order enmasse. The charge memos as well as transfer orders have been issued only due to political mala fide/hatred. Furthermore, permission from the employer for their participation in such demonstration which is outside their employment and unconnected with their employment is not necessary. The petitioners have decided to participate in the demonstration as they thought that it will be over in an hour and they could return to work as usual, and they never thought they would be arrested and remanded to judicial custody. Hence, their absence from 29.8.2007 to 31.8.2007 was beyond their control. Unless and until the alleged absence was for more than 8 consecutive days, the respondents-Corporation cannot take any action. Mere initiation of the disciplinary action based on the pendency of criminal case will not clothe right to the respondents to issue the charge memo or any disciplinary action against them. Only if they are convicted for an offence, that too, if it involves moral turpitude, it would amount to misconduct under Clause 24 (xxx) of the certified Standing Orders and not otherwise. The respondents have wrongly proceeded that Clause 24(xxx) of the Certified Standing Orders envisages the mere pendency of the criminal case will warrant the impugned charge memo. Having issued the charge memo under Clause 24(xxx) of the Certified Standing orders, now the respondents are trying to bring it

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under Clause 24(XLxxx). Furthermore, even that provision may not be available to the respondents, since any commission or omission alleged against them would not constitute misconduct as per the above provision. Furthermore, transfer orders and charge memos have been issued to them only due to political malafide and it amounts to colourable and arbitrary exercise of powers and it is hit by Article 14 of the Constitution of India. Thus, the sum and substance of the common rejoinder affidavit filed by the petitioners emphasises that the respondents have no power to initiate departmental proceedings against the petitioners by issuing a charge memo and that the orders of transfer have been passed out of political mala fide.

5. On the background of the above facts, Mr.D.Hariparanthaman, the learned counsel appearing for the petitioners and Mr.R.Singaravelan, the learned counsel appearing for the respondents have made their submissions.

6. The case of the respondents is that the petitioners, who were working in Thiruthani Depot, have participated in the agitation called by a political party and they were arrested and remanded to judicial custody on 29.8.2007 A.N. to 31.8.2007 and they reported for duty on 4.9.2007 and on that date, the impugned orders have been issued to them. The charge against the petitioners was that they have participated in the agitation on 29.8.2007 at Vidaiyur village and arrested by the police authorities. Thus, the show cause notice was issued to them citing Clause 24(xxx) of the Certified Standing Orders calling upon them to explain why action should not be taken against them. From the said proceedings, it could be seen that charges against the petitioners are that they have participated in the agitation on 29.8.2007, got arrested and detained in prison. The English version of the charges against the petitioners are as follows:-

> "(1) On 29.8.2007, you have participated in the agitation held at Vidaiyur and you have been arrested and put in prison.
>
> (2) The said act on your part is against the Corporation Standing Orders."

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7. Thus, as could seen from the above charges, the respondents have taken action against the petitioners for their participation in the agitation held on 29.8.2007 and their subsequent arrest and detention in prison, which led to the issuance of the impugned proceedings to the petitioners. Furthermore, Clause 24(xxx) of the Certified Standing Orders has been cited in the impugned proceedings. If we look at Clause 24 (xxx) of the Certified Standing Order, it speaks about only conviction by a criminal court of an offence involving moral

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turpitude and punishable with imprisonment. The provision referred to above in the Certified Standing Orders enumerates action against an employee who has been convicted by a criminal court of an offence involving moral turpitude and punishment with imprisonment, but it does not specify the person who has been arrested pursuant to the lodging of criminal proceedings. Thus, there cannot be charge against the petitioners that they participated in the agitation and they have been arrested and put in prison, constituted misconduct and liable for disciplinary action.

8. While the petitioners specifically raised the said contention in paragraph 9 of the counter affidavit, it has been stated as follows:-

> "With regard to para (17) Charge Memo has been issued on the report received from the Branch Manager, Tiruthani along with a copy of the F.I.R. and it is nothing to do with the criminal case which is different from the purpose for which the Charge Memo has been issued as it has been issued for his sudden absence and taking part in the agitation."

Again in paragraph 13, it is stated as follows:-

> "The Charge Memo is for the violation of the Board Standing Orders and his participation in the agitation without any prior intimation affecting the public interest. As a member of Essential Service of Public Utility concern he ought not to have absented himself from duty without any prior intimation."

9. If the respondents have issued the charge memo for violation of the Certified Standing Orders for their participation in the agitation without any prior intimation and for their sudden absence, the respondents would have stated so in the "charge memo". But, as pointed out earlier, the charge memos have been issued to the petitioners for their participation in the agitation, which led to their arrest and detention in jail. The counsel for the respondents has not pointed out any provision in the Certified Standing Orders that the employees of the respondents are prohibited from taking part in political agitation. Striking work or inciting others to strike work, habitual absence without leave or absence without leave for more than 8 consecutive days or overstaying sanctioned leave without sufficient grounds or satisfactory explanation, participating or engaging in demonstrations which are not peaceful and rowdism in demonstration, interference with or disturbance to normal work; and conviction by a criminal

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court of an offence involving moral turpitude and punishable with imprisonment are some of the acts and omissions which have been enumerated under Clause 24 of the Certified Standing Orders, which will enable the employer from taking disciplinary action against the employees. The respondents have specifically pointed out Clause 24(xxx) of the Certified Standing Orders. If really, the intention of issuing the charge memo was for the reason that the petitioners have absented themselves which had affected the public interest and that the said participation in the agitation was done without prior intimation, the same would have found part in the charge memo.

10. Thus, I am constrained to come to a conclusion that the respondents have invoked only Clause 24(xxx) of the Certified Standing Orders under which a person who has been convicted by a criminal court of an offence involving moral turpitude and punishable with imprisonment alone could be issued with a charge memo, and since in the case on hand, the petitioners have not been convicted for an offence involving moral turpitude, the charge memo issued to them invoking the said provision is not permissible.

11. In this connection, the learned counsel appearing for the petitioners cited a judgment of the Honourable Apex Court reported in 1984 (1) L.L.N. 57 (GLAXO LABORATORIES (INDIA) LTD v. LABOUR COURT, MEERUT AND OTHERS). The relevant passage in the said judgment in paragraph 23 reads as follows:-

> "In short, it cannot be left to the vagaries of management to say ex post facto that some acts of omission or commission nowhere found to be enumerated in the relevant standing order is nonetheless a misconduct not strictly falling within the enumerated misconduct in the relevant standing order but yet a misconduct for the purpose of imposing a penalty. Accordingly, the contention of Sri Shanthi Bhushan that some other act of misconduct which would be per se be an act of misconduct though not enumerated in Standing Order 22 can be punished under Standing Order 23 must be rejected."

12. The same view was expressed by the Division Bench of this Court reported in 1990 (2) L.L.J. 96 (S.ALAMELU v. S.E. ELECTRICITY SYSTEM) and 1995 (1) L.L.N. 1198 (J.DHANARAJ v. T.N. ELECTRICITY BOARD). The above authorities make it very clear that no disciplinary action can be taken against an employee if such act has not been enumerated in the Standing Orders. In the present case on hand, as I discussed already, the misconduct that has been attributed against the petitioners is that they have participated in the agitation, got arrested and put in prison. The said act or omission does not find place in Order

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24(xxx) of the Certified Standing Orders which invites disciplinary action.

13. Furthermore, as discussed earlier, the agitation was not within the factory premises but totally in a different village. To enable an employer to peacefully carry out industrial activity, the Act confers powers on him to prescribe conditions of service including enumerating acts of misconduct when committed within the premises of the establishment. Since the agitation was not within the factory premises, the employer cannot say that the agitation elsewhere held is a misconduct, especially, when such an act does not constitute an act or omission which constitutes 'misconduct' warranting disciplinary action against the employees as per the Certified Standing Orders. Thus, a harmonious construction, if applied, the expression 'misconduct' in Standing Order 24 refers to those acts of omission or commission referred thereon and none else.

14. The discussion made above will amply establish that the respondents have issued the impugned proceedings, the reading of which will demonstrate that it does not constitute any misconduct as enumerated under Clause 24(xxx) of the Certified Standing Orders. Since I have come to the conclusion that the said provision cannot be invoked against the petitioners for the reasons stated above, I am inclined to interfere with the issuance of the charge memo to the petitioners.

15. Regarding the orders of transfer made against the petitioner, it cannot be denied that the petitioners have been transferred for their participation in the agitation called by a political party which is an opposition party in the State. Even the impugned orders of transfer do not say that the petitioners have been transferred on administrative grounds. Though I am conscious of the fact that the order of transfer could not normally be interfered, as has been held by the various pronouncements of this Court as well as by the Honourable Apex Court, since I have come to the conclusion that the present orders of transfer have been passed in view of the participation of the petitioners in the agitation called by the opposition party, I am inclined to interfere with the orders of transfer passed against the petitioners. The impugned orders of transfer make it explicitly clear that implied malice is writ large on the face of the records and the order of transfer cannot be a tool in the hands of the respondents and be used as a weapon in the interest of administration.

16. In view of the above discussion made above, I am constrained to hold that the impugned proceedings listing charges and the transfer orders issued to the petitioners are liable to be set aside and accordingly, set aside. The Writ petitions stand allowed. Consequently, the connected

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Miscellaneous Petitions are closed. However, there is no order as to costs.

dpp

Sd/
Asst.Registrar

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Sub Asst.Registrar

To

1. The General Manager,
   Tamilnadu State Transport Corporation
   (Villupuram) Ltd,
   Kancheepuram Region,
   Kancheepuram.

2. The Branch Manager,
   Thiruthani Depot,
   Tamilnadu State Transport Corporation
   (Villupuram) Ltd, Kancheepuram Region,
   Thiruthani.

- 1 cc to the Mr. D. Hariparanthaman, Advocate SR No.65216
- 8 ccs to the Mr. R. Singgravelan, Advocate SR No. 65515 to 65522

MS(CO)
SR/28.11.2007

Order in
W.P.Nos.29764 to 29771
of 2007;&
Connected M.Ps.

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